

**FILED**

5-04-16

**SETTLEMENT AGREEMENT**

In order to avoid the costs and risks of further litigation and to expeditiously resolve this matter, the Safety and Enforcement Division of the California Public Utilities Commission (SED), and Vertex Telecom, Inc. (Vertex or Applicant) and its predecessors, successors, affiliates, and assigns, hereby agree upon the following terms for the settlement of SED's Protest of Vertex's Application for a Certificate of Public Convenience and Necessity (CPCN) to expand its existing authority to provide resold local and interexchange telecommunication services in the State of California, A.15-06-016 (Application).

**I. JOINT FACTUAL STATEMENT**

1. The following joint factual statement is taken from Vertex's application and documents obtained in SED staff's investigation. Vertex is a California corporation with its principal place of business located at 980 Corporate Center Drive, Pomona, California 91768. In 2003, Vertex Telecom, Inc. (Vertex) applied for non-dominant interexchange registration authority (A.03-03-034) which was granted by Decision (D.) 03-07-052 (U-6786-C). Subsequently, Vertex received authority pursuant to D.05-10-006 to provide local exchange service. Pursuant to these authorities, Vertex currently offers resold services, such as calling cards and local and long distance service.<sup>1</sup>

2. On June 17, 2015, Vertex filed A.15-06-016 requesting to expand its existing authority to provide full facilities local and interexchange telecommunication services in

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<sup>1</sup> U6786C, see A.05-05-018, D.05-10-006.

California. The Application was noticed on the Commission's calendar on June 23, 2015, and SED protested on July 21, 2015.

3. SED's protest alleges that Vertex violated Rule 1.1 of the Commission's Rules of Practice and Procedure in its Application. Under Rule 1.1, any person who transacts business with the Commission agrees to not "...mislead the Commission or its staff by an artifice or false statement of fact or law." Vertex did not disclose in its application that it had committed violations in other states and had actions taken against it by government agencies in other states. In its original Application, Vertex states that it has not "had a telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction" or "been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries", except in the state of Washington. In the first Amendment to its application, Vertex stated that its Oregon operating authority had also been revoked, and in its second Amendment to its application, Vertex identified additional revocations of operating authority in the states of Iowa, Michigan, and Montana. However, SED staff found revocations, suspensions or other actions taken against Vertex's operating authority by 35 agencies across 29 states. Vertex contends that it never engaged in any operations in any state where its telecommunications operating authority was revoked or where its registration to conduct intrastate business was not in good standing. Vertex does admit, however, that its foreign corporate registration (authority to conduct intrastate business) was revoked or canceled in a number of states due to failures to file annual reports or remit fees as found by SED.

4. SED's Protest further alleges that Vertex did not provide sufficient proof of financial responsibility. D.95-12-056 and D.91-10-041 require CPCN applicants to provide proof of financial responsibility. The decision states:

To prove sufficient financial resources, facilities-based applicants are required to demonstrate that they possess a minimum of \$100,000 in unencumbered cash; non-facilities-based applicants are required to demonstrate that they possess a minimum of \$25,000 in unencumbered cash.

Subsequent to filing the Protest, Vertex met and conferred with SED and provided additional documentation of financial responsibility. The additional documentation is attached hereto in Attachment A and should be incorporated into the record in this proceeding.

## II. AGREEMENT

5. Acknowledgements. Vertex acknowledges that Rule 1.1 requires applicants to provide true and accurate information in documents filed at the Commission, and the Application requires Vertex to disclose whether the applicant "had a telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction," and that Vertex did not disclose the existence of all revocations and other actions involving its authority to operate or conduct business in other states. By this Settlement, Vertex states that it will fully meet its regulatory and legal obligations in California in the future. Subject to Vertex's ongoing compliance with this Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, Vertex and SED acknowledge that all issues raised in SED's protest of Vertex's application for a CPCN will have been fully resolved.

6. Vertex further acknowledges that Commission decisions require telecommunication companies in California to provide proof of financial responsibility in order to obtain operating authority. Vertex acknowledges that it provided a one-month bank statement

in its application, which does not satisfy its financial obligation. Vertex has provided additional documentation, attached hereto.

7. Penalty Payments. In order to resolve the legal issues raised by SED in its Protest, Vertex will pay a \$17,500 penalty to the State of California General Fund. Vertex will pay \$5,500 within 30 days after the calendar date of the Commission's approval of this Agreement. Vertex will pay the remaining \$12,000 penalty in 12 equal monthly installments beginning 30 days after the first payment of \$5,500 is made. All penalty payments shall be made payable to the California Public Utilities Commission and remitted to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall indicate the decision number of the Commission decision number incorporating this settlement.

### III. GENERAL PROVISIONS

8. Scope and Effect of Agreement. This Agreement represents a full and final resolution of SED's Protest, and the matters giving rise thereto. The parties understand that this Agreement is subject to approval by the Commission. As soon as practicable after the Parties have signed the Agreement, a Motion for Commission Approval and Adoption of the Agreement will be filed. The Parties agree to support the Agreement, recommend that the Commission approve it in its entirety without change and use their best efforts to secure Commission approval of it in its entirety without modification. The Parties agree that, if the Commission fails to adopt the Agreement in its entirety without material change and issue the requested operating authority, the Parties shall convene a settlement conference within 15 days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Agreement shall be rescinded and

the Parties shall be released from their obligation to support this Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding and agree that neither this Agreement nor its terms shall be admissible in such proceeding unless the Parties agree.

9. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

10. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily.

11. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

12. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

13. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

14. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

15. Interpretation of the Agreement. The Parties have bargained in good faith to reach the agreement set forth herein. The Parties intend the Agreement to be interpreted as a unified, interrelated agreement. Both of the Parties have contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against either of them because a particular Party or its counsel drafted the provision.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

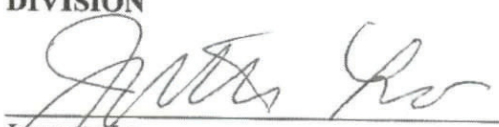
**VERTEX TELECOM, INC.**

Dated: Mar 1st, 2016


  
James Chin  
Chief Executive Officer  
Vertex Telecom, Inc.  
980 Corporate Center Drive  
Pomona, CA 91768

**SAFETY AND ENFORCEMENT  
DIVISION**

Dated: Mar. 1, 2016

  
Jeanette Lo  
Chief, Utility Enforcement Branch  
Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dated: March 1, 2016

  
Travis T. Foss  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Avenue  
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(End of Attachment E)